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UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT
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TELEPHONE

215-597-2995

December 6, 2018

Allen A. Kacenjar Jr. Esq.
Squire Patton Boggs
127 Public Square
4900 Key Tower
Cleveland, OH 44114

RE: Hazelton Creek Properties LLC v. EPA

Case Number: 18-3665

Agency Case Number: 03-18-0016

PACER account holders are required to promptly inform the PACER Service Center of any contact information changes. In order to not delay providing notice to attorneys or pro se public filers, your information, including address, phone number and/or email address, may have been updated in the Third Circuit database. Changes at the local level will not be reflected at PACER. Public filers are encouraged to review their information on file with PACER and update if necessary.

To All Parties:

Enclosed is the case opening information regarding the above-captioned petition for review filed by **Hazelton Creek Properties LLC**, docketed at No. **18-3665**. All inquiries should be directed to your Case Manager in writing or by calling the Clerk's Office at 215-597-2995. This Court's rules, forms and case information are available on our website at <http://www.ca3.uscourts.gov>. The petition was received on **12/06/2018**.

Counsel for Petitioner

The docketing fee of \$500.00 was received on **12/06/2018**. A receipt for the docketing fee is enclosed.

For Immigration cases only:

The filing of this petition for review will not automatically stay removal. A separate Motion for Stay of Removal must be filed.

As Counsel for Petitioner(s), you must file: 1. Application for Admission (if applicable); 2. Appearance Form 3. Disclosure Statement (except governmental entities); and 4. Docketing Statement. These forms must be filed **within 14 days of the date of this letter**.

Failure of Petitioner(s) to comply with any of these requirements by the deadline will result in the DISMISSAL of the case without further notice. 3rd Cir. LAR Misc. 107.2.

Counsel for Respondent(s)

As Counsel for Respondent(s), you must file: 1. Application for Admission (if applicable); 2. Appearance Form 3. Disclosure Statement (except governmental entities). These forms must be filed **within 14 days of the date of this letter**.

Pursuant to Fed. R. App. P. 17 (a), the agency must file the record with this Court within 40 days after being served with the petition for review, unless the statute authorizing review provides otherwise.

Attached is a copy of the full caption. Please review the caption carefully and promptly advise this office in writing of any discrepancies.

Very truly yours,
Patricia S. Dodszeweit, Clerk

By: s/Kirsi
Case Manager
267-299-4947

cc: United States Environmental Protection Agency

HAZELTON CREEK PROPERTIES, LLC,
Petitioner

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Respondents

**STANDING ORDER REGARDING MOTIONS TO EXCEED THE PAGE
LIMITATIONS OF THE FEDERAL RULES OF APPELLATE PROCEDURE**

Effective Immediately

PRESENT: McKEE, Chief Judge, and SLOVITER, SCIRICA, RENDELL, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR, VANASKIE, ALDISERT, WEIS, GARTH, STAPLETON, GREENBERG, COWEN, NYGAARD, ROTH, BARRY, and VAN ANTWERPEN, Circuit Judges

AND NOW, it being noted that motions to exceed the page/word limitations for briefs are filed in approximately twenty-five percent of cases on appeal, and that seventy-one percent of those motions seek to exceed the page/word limitations by more than twenty percent;

Notice is hereby given that motions to exceed the page or word limitations for briefs are strongly disfavored and will be granted only upon demonstration of extraordinary circumstances. Such circumstances may include multi-appellant consolidated appeals in which the appellee seeks to file a single responsive brief or complex/consolidated proceedings in which the parties are seeking to file jointly or the subject matter clearly requires expansion of the page or word limitations.

Accordingly, it is **ORDERED** that a three-judge Standing Motions Panel is hereby appointed to rule on all motions to exceed the page/word limitations for briefs since the page/word limitations, prescribed by Fed. R. App. P. 32(a)(7), should be sufficient to address all issues in an appeal.

It is further **ORDERED** that Counsel are advised to seek advance approval of requests to exceed the page/word limitations whenever possible or run the risk of rewriting and refile a compliant brief. Any request to exceed page/word limitations submitted in the absence of such an advance request shall include an explanation of why counsel could not have foreseen any difficulty in complying with the limitations in time to seek advance approval from the panel.

This order shall not apply to capital habeas cases.

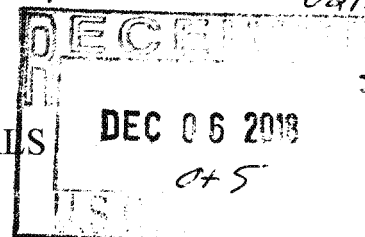


Date: January 9, 2012

By the Court,

/s/ Theodore A. McKee
Chief Judge

Marcia M. Waldron
Marcia M. Waldron, Clerk



IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

HAZLETON CREEK
PROPERTIES, LLC,

Petitioner,

v.

ANDREW WHEELER, in his official
capacity as Acting Administrator of the
United States Environmental Protection
Agency; and UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY,

Respondents.

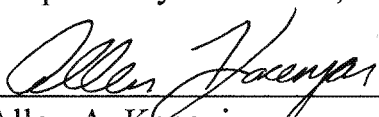
Case No. 18-3665

PETITION FOR REVIEW

Pursuant to the Section 19(a) of the Toxic Substances Control Act, 15 U.S.C. § 2618(a), and Rule 15(a) of the Federal Rules of Appellate Procedure, Hazleton Creek Properties, LLC hereby petitions this Court for review of the final action taken by Respondents titled "Notice of Noncompliance" (dated September 26, 2018) in United States Environmental Protection Agency Region III Docket No. 03-18-0016 and attached as Appendix A to this petition.

DATED: December 5, 2018

Respectfully submitted,


Allen A. Kacenjar
allen.kacenjar@squirepb.com

SQUIRE PATTON BOGGS (US) LLP
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114-1304
T: (216) 479-8500; F: (216) 479-8780

Counsel for Petitioner
Hazleton Creek Properties, LLC

APPENDIX A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SEP 26 2018

Mr. William Rinaldi
Hazleton Creek Properties, LLC
4000 4th Avenue
Moosic, PA 18507

Re: Notice of Noncompliance
Docket Number: 03-18-0016

Dear Mr. Rinaldi:

Thank you for your response to the Notice of Non-compliance (NON) and Information Request Letter (IRL) that you recently received from the U.S. Environmental Protection Agency in relation to polychlorinated biphenyls (PCBs). EPA has reviewed your response and the information which you provided. In regard to the regulatory standards that were referenced in the NON and IRL, EPA is providing the following further clarification of the use of PCBs.

The Toxic Substances and Control Act, 15 U.S.C. Section 2605(e), and EPA's implementing regulations at 40 C.F.R. Part 761 impose limitations on, and requirements for, the use of PCB-containing materials. In particular, Section 761.20(a) of the PCB regulations prohibits the use of PCB-containing materials, regardless of any concentration, other than in a totally enclosed manner, without an exemption. Any concentration is defined in the PCB regulations under Section 761.3 as the "Quantifiable Level/Level of Detection", which means 2 micrograms per gram from any resolvable gas chromatograph peak, i.e. 2 parts per million (ppm).

The Pennsylvania Beneficial Use Permit and the Management of Fill Policy both provide for the use of PCB-containing material. They do not address the disposal of such material. As advised in the NON, the use of PCB-containing material is restricted to less than 2 ppm.


The NON your company received is a warning letter that EPA issues to alert parties of actual or potential violations, and to require corrective actions, where appropriate. No corrective action is necessary by your company at this time. However, further receipt of any PCB-containing materials with PCB concentrations equal to or greater than 2 ppm would constitute a violation of the TSCA PCB regulations. Please ensure that your facility takes all actions in preventing future violations. EPA also recommends that certified deed restrictions and land-use

covenants be applied to the actual property deed for your site to ensure that potential future purchasers and/or tenants of the property are aware that PCB-containing materials have been used at the site.

- Any future non-compliance with 40 C.F.R Part 761 of TSCA may result in further federal action. Nothing in the previously issued NON shall relieve Hazleton Creek Properties, LLC., of any duty to comply with any applicable federal, state, or local environmental laws. Please be advised that EPA reserves the right to investigate this matter further and to take any and all enforcement or other response actions which may be appropriate, including a reconsideration of the information provided in your response to the NON.

Any questions concerning this letter should be directed to Scott Rice of my staff at 304-231-0501 or rice.scott@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Armstead", is written over a horizontal line.

John A. Armstead, Director
Land and Chemicals Division

cc: Walt Harner
(PADEP)

CERTIFICATE OF SERVICE

I have provided the Clerk with copies of the foregoing Petition for Review for service in accordance with Federal Rule of Appellate Procedure 15(c)(3). I hereby certify that on December 5, 2018, I also served the foregoing Petition for Review by sending a copy in First Class Mail in accordance with Third Circuit Local App. Rule 113.4(b) and Federal Rule of Appellate Procedure 25(c) to each of the following:

The Honorable Andrew Wheeler, Acting Administrator
U.S. Environmental Protection Agency Headquarters, Mail Code: 1101A
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

The Honorable Matthew G. Whitaker, Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Matthew Leopold, General Counsel
Office of General Counsel
U.S. Environmental Protection Agency Headquarters, Mail Code: 2310A
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Cosmo Servidio, Regional Administrator
U.S. Environmental Protection Agency, Region III, Mail Code: 3RA00
1650 Arch Street
Philadelphia, PA 19103-2029



Counsel for Petitioner
Hazleton Creek Properties, LLC

13100070 Page: 7 Date Filed: 12/06/2018

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Page 1 of 2

ORIGIN ID: BKLA (210) 479-8500
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Total Due: \$500.00
Total Tendered: \$500.00
Change Amt: \$0.00

18-3665

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